

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SUSAN REAVES

Claimant

VS.

ECONOMIC OPPORTUNITY FOUNDATION

Respondent

AND

COMMERCE & INDUSTRY INSURANCE COMPANY

Insurance Carrier

Docket No. 1,029,819

ORDER

Respondent and its insurance carrier appealed the December 28, 2006, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

ISSUES

This is a claim for an April 15, 2005, accident. The principal issue presented to Judge Hursh at the December 27, 2006, preliminary hearing was whether claimant had served timely written claim for her workers compensation benefits. In the December 28, 2006, Order, the Judge found claimant signed an accident report dated April 18, 2005, which satisfied the requirements of written claim. Consequently, the Judge granted claimant's request for benefits.

Respondent and its insurance carrier contend Judge Hursh erred. They argue claimant's testimony, which indicated she intended to receive workers compensation benefits by reason of presenting the accident report to her employer, is not credible. They argue it is illogical that claimant believed the accident report would result in her receiving medical benefits. The argument may be summarized as follows:

If the claimant had completed the Accident/Incident Report Form on April 18, 2005[,] with the intention of being paid future medical, then it is illogical that the claimant continued to work with continuing problems for seven months without requesting additional medical treatment. It is also illogical that once the claimant resumed the future medical that she was concerned about when she completed her putative

written claim, she did not tell the employer about the treatment beforehand and had the treatment paid under her personal health insurance.¹

Respondent and its insurance carrier also argue claimant's more recent testimony concerning written claim is inconsistent with her testimony from the first preliminary hearing when she testified her Application for Hearing and Application for Preliminary Hearing were the first documents she signed requesting workers compensation benefits. In summary, respondent and its insurance carrier request the Board to deny claimant's request for benefits due to the lack of timely written claim.

Conversely, claimant requests the Board to affirm the December 28, 2006, Order. Claimant argues, in essence, she was justified to believe that the Accident/Incident report set in motion her receipt of workers compensation benefits due to her past experience with this employer. Claimant also challenges respondent and its insurance carrier's assertion that she provided inconsistent testimony.

The only issue on this appeal is whether the Accident/Incident report claimant signed on April 18, 2005, satisfied the requirement of a written claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member finds and concludes the December 28, 2006, Order should be affirmed.

Claimant was injured in an April 15, 2005, automobile accident. The accident arose out of and in the course of claimant's employment with respondent. Claimant notified respondent of the accident and was referred for medical treatment. That medical treatment ended on approximately April 28, 2005.

On April 18, 2005, which was after claimant commenced medical treatment, claimant prepared and signed a document entitled Accident/Incident Report Form. Claimant presented the document to respondent. At some point the notation "Claim #710-101656" was placed on the upper right corner of the document.

Claimant has worked for respondent for approximately 10 years. In an earlier workers compensation proceeding claimant prepared a similar document, which commenced her workers compensation benefits. Accordingly, claimant believed she would receive workers compensation benefits by reason of the document she prepared and signed on April 18, 2005. Claimant testified, in part:

¹ Respondent's Brief at 3 (filed Jan. 18, 2007).

Q. (Mr. Wallace) And when you had your prior work comp injury, what did you do? Did you fill out this same type of accident form?

A. (Claimant) Yes.

Q. And did you turn that in to your employer?

A. Yes.

Q. And when you did that, did that trigger the requirements in you getting your workers' compensation benefits?

A. Yes, that set everything in process.

Q. And was that your intent when you had this one signed and filed?

A. Yes.

Q. And, in fact, you were receiving work comp benefits; is that correct?

A. Yes.

Q. What kind of benefits were you receiving?

A. Medical and physical therapy.

Q. And when you filed this specifically, were you concerned about any benefits other than what you were currently receiving?

A. Yes.

Q. What was your concern?

A. Future benefits.

Q. You wanted to make sure your future benefits were provided as well?

A. Yes.

Q. And once again, your intention in signing that document was to get workers' compensation benefits?

A. Yes.²

² P.H. Trans. (Dec. 27, 2006) at 7, 8.

In addition, respondent's insurance carrier or its agents acknowledged a claim had been filed in letters to claimant dated June 9, 2005, and July 27, 2006. The former letter, which was from AIG's American International Recovery, stated respondent's workers compensation insurance carrier had paid a workers compensation claim and, therefore, had a lien in the sum of \$1,209.68 associated with claimant's April 15, 2005, accident. In the latter letter, AIG's Claim Services notified claimant that her file, which was designated as "Claim Number 710-101656," had been transferred to claim specialist Christopher C. Wigginton.

The undersigned agrees with the Judge's analysis that the Accident/Incident form claimant completed on April 18, 2005, satisfied the requirements of written claim. Although at the first preliminary hearing claimant may have believed her Application for Hearing and Application for Preliminary Hearing were the earliest writings she could produce to establish written claim, it would appear the April 18, 2005, form had been forgotten and not yet produced. In short, claimant's testimony is credible and the preliminary hearing Order should be affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned Board Member affirms the December 28, 2006, Order entered by Judge Hursh.

IT IS SO ORDERED.

Dated this ____ day of February, 2007.

BOARD MEMBER

c: Michael R. Wallace, Attorney for Claimant
William G. Belden, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge

³ K.S.A. 44-534a.